United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/1012
27 July 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1012

Case No. 1093: BALDWIN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, President; Mr. Julio Barboza, Vice-President; Ms. Marsha Echols;

Whereas, on 23 August 1999, Geoffrey L.G. Baldwin, a former staff member of the United Nations, filed an application containing pleas which read as follows:

"II. PLEAS

...

(b) (i) The Tribunal is requested to declare the response of the Representative of the Secretary-General to my appeal to the JAB [Joint Appeals Board] totally out of order as not being in compliance with the time limits and provisions for their extension of the Staff Regulations and Rules, and of the Rules of Procedure of the JAB, and therefore to declare all my claims uncontested.

(ii) The Tribunal is requested to rescind the decision of the Secretary-General not to pay any of my outstanding claims and to order him to pay all claims in accordance with Staff Rules and Administrative Instructions as directed by the Tribunal.

(iii) The Tribunal is requested to order the Secretary-General to pay damages for the emotional stress of discrimination over many years at least in the sum of $20,000 plus $10,000 for procedural delay.

...

(e) The Tribunal is requested to order the Secretary-General to pay such further punitive damages as it may consider appropriate."

Whereas the Respondent filed his answer on 21 January 2000;

Whereas the Respondent submitted additional documents on 18 May 2000;

Whereas the Applicant filed written observations on 30 May 2000;

Whereas, on 12 June 2000, the Respondent filed an additional document;

Whereas the facts in the case are as follows:

The Applicant was initially appointed for a one-year period on 28 September 1987 as an Advisor in Water Resources Development, Natural Resources and Energy Division, Department of Technical Cooperation for Development, New York, at the L-6 level. His employment was subsequently extended a number of times until its expiration on 30 September 1996. The Applicant appealed the non-renewal of his contract to the Administrative Tribunal which found that he had a reasonable expectancy to be considered for renewal and awarded him six months net base salary in Judgement No. 980.

During his employment, the Applicant made frequent business trips and submitted the corresponding travel claims. He frequently took rest stops or layovers in London and, on four occasions, sought treatment there for illness or injury which occurred during business travel. His interpretation of the administrative instructions differs from that of the Travel Claims Unit which routinely denied specific items of his travel claims.

In the instant application, the Applicant is contesting the Administration's refusal to reimburse him for the following categories of travel claim:

- DSA at arrival city rate following overnight travel;
- DSA and terminal expenses while in official travel status;
- DSA for sick leave while in official travel status;
- DSA for higher rate hotels;
- DSA for unavoidable flight connection time;
- Cost of unavoidable 1st class upgrade;
- DSA for rest stop;
- Airport tax;
- DSA for repatriation travel to London on 20/21 December 1996 following his separation from service.

On 5 May 1997, the Director, Accounts Division, OPPBA, wrote to the Applicant stating, *inter alia*:

> "According to our records, all your enquiries relating to settlement of travel claims between the period 1990 and 1995 had been reviewed and settled by ... the former Chief of Travel Claims Unit. As to the ... settlement of your 1996 travel claims, they were reviewed and determined to be properly processed in accordance with the relevant rules, regulations, and administrative instructions.
>
> In light of the repeated explanations provided to you over a long period of time, I regret to inform you that we cannot accommodate any further requests for clarifications."

On 4 June 1997, the Applicant wrote to the Secretary-General requesting administrative review of the "decision of the Director, Accounts Division, OPPBA, not to consider the supplementary claims submitted to the Travel Claims Unit". On 21 October 1997, he requests administrative review of the decision to deny him DSA for the duration of his repatriation travel to London.

On 22 February 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 13 April 1999. Its considerations and recommendation read as follows:

"***Considerations***

Case 97-75

18. After confirming that the P.35 action had been amended to authorize payment of one day travel time to [the] Appellant on repatriation, the Panel concurred with [the Human Resources Officer]'s reading of ST/AI/249/Rev.3 (...) that he was entitled to DSA [daily subsistence allowance] for his overnight travel.

Case 97-49

19. The Panel did not consider it feasible or even within its competence to undertake an in-depth examination of [the] Appellant's travel claims, the rulings and calculations of the Travel Claims Unit, and the various administrative issuances relevant to the claims. Each of the Panel members had, however, reviewed the documents submitted by [the] Appellant. The Panel had a sufficient basis on which to discuss the substance, if not all the particulars, of the appeal.

20. Initially, the Panel considered that there were three possible courses available to it in response to [the] Appellant's appeal against the decision not to consider the supplementary travel claims he had submitted.

21. The first was simply to take not of [the Human Resources Officer]'s memorandum of 4 September 1997 (...) and observe that it constituted the further consideration which [the] Appellant had requested. The Panel felt that [the Human Resources Officer]'s succinct memorandum did not deal with some claims which might be well-founded, e.g. instances in which claims were rejected by the Travel Claims Unit in the absence of supporting documentation and which were not reviewed when, according to [the] Appellant, that documentation was later submitted, and did not fully recognize the often complicated travel schedules typical of Inter-regional Advisers.

22. The second possibility was to recommend that the Accounts Division undertake the further review which the Director of that Division had refused in his letter of 5 May 1997. The Panel agreed that this would serve no useful purpose, and might, indeed, be counter-productive.

23. Finally, the Panel considered recommending that [the] Appellant's travel claim be audited but decided that that procedure would be wasteful, of time and of the Organization's resources.

24. The Panel would wish to place on record that, in rejecting the three possibilities mentioned above, it also bore in mind:

- [The] Appellant's allegation (...) that the amount of his outstanding claims is $9,318;
- The several reviews of these claims; and
- The fact that [the] Appellant has continued to reassert them.

Recommendation

25. The Panel recommends that [the] Appellant be paid the sum of $3,000.00 in return for a written statement that he abandons all present and future claims against the Organization.

26. The Panel makes no other recommendation with respect to these appeals."

On 9 August 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

... In respect of Case 97-75, the Secretary-General has taken note of the Board's finding that you were not entitled to DSA for your overnight travel on repatriation. The Secretary-General accepts the Board's findings in respect of [this case] and has decided to take no further action in respect of [this part] of your appeal.

In respect of Case 97-49, the Secretary-General has taken note that the Board did not consider it feasible or even within its competence to undertake an in-depth examination of your travel claims, the rulings and calculations of the Travel Claims Unit and the various administrative issuances relevant to the claims. The Board further considered that (a) [the Human Resources Officer]'s memorandum of 4 September [1997] (...) did not deal with some of your claims which might be well-founded, (b) it would not be useful to recommend that the Accounts Division undertake a further review of your claims, and (c) it would be wasteful of time and the Organization's resources to recommend that your claims be audited. Having regard to your allegation that the outstanding amount due to you is $9,318.00, the Board recommended that you be paid the sum of $3,000.00 in return for a written statement that you abandon all present and future claims against the Organization.

> The Secretary-General considers that the Board's recommendation to pay you $3,000 is not based on any findings of liability on the part of the Organization. In the absence of any legal liability to pay you such an amount, considerations of equal treatment make such a settlement not in the interest of the Organization. The Secretary-General cannot, therefore, accept the Board's recommendation. The Secretary-General has been advised that all your claims had been reviewed and processed in accordance with the relevant rules, regulations and administrative instructions. However, it appears that the results of such review were not always communicated to you in writing. The Secretary-General is therefore requesting the Accounts Division to provide you with a comprehensive account substantiating the results of their review of all the claims set out in your appeal in Case 97-49.
>
> The above-mentioned decision of the Secretary-General is 'the final decision on the appeal' mentioned in staff rule 111.2 (p). Therefore, any recourse in respect of the above decision should be addressed to the Administrative Tribunal.
>
> ..."

On 23 August 1999, the Applicant filed with the Tribunal the application referred to earlier.

On 20 June 2000, the Director, Accounts Division, OPPBA, wrote to the Applicant, advising him, *inter alia*, that "[o]n the basis of the Secretary-General's decision of 9 August 1999 on [the Applicant's] appeal to the JAB, ... the Accounts Division was requested to provide [the Applicant] with a comprehensive account substantiating the results of [their] review of [the] outstanding claims set out in [his] appeal". There followed a detailed evaluation of the Applicant's 24 outstanding claims, with reference to the itinerary as well as the relevant policies and procedures for claims in each case. In three of the claims, the Director found that the Applicant's claim was justified in full or in part, and a total of $464 was owed. He noted that this resulted from miscalculation on the part of the Organization and that these errors were "sincerely regretted". In each of the remaining claims, the Director explained why the Applicant was not entitled to further payment. On 8 May 2000, the Applicant replied to the Director, Accounts Division, disputing his evaluation of the outstanding claims.

Whereas the Applicant's principal contentions are:

1. The decision of the JAB to convene one panel to hear the Applicant's appeal of both his separation and the decision relating to his travel claims was prejudicial, and precluded proper consideration of the cases.

2. The JAB report is perfunctory and fails to address issues raised by the Applicant, in particular, the matter of timeliness of the Respondent's submissions to the Panel.

3. In filing its response to the Applicant's appeal to the JAB, the Respondent failed to comply with the established time limits, and thus the Applicant's appeal should have been considered uncontested.

4. The letter communicating the Secretary-General's decision pursuant to the JAB report was "incomplete, selective, biased and legally incorrect".

5. The Organization has continually misinterpreted ST/AI/196 and ST/AI/249 in handling the Applicant's claims.

6. The Travel Claims Unit practice of reducing DSA by 50 per cent for time spent on sick leave whilst on official travel lacks authority and is contrary to the Staff Rules.

Whereas the Respondent's principal contentions are:

1. The Applicant's travel claims were reviewed and settled in compliance with the relevant Staff Regulations and Rules. Accordingly, the Applicant's rights were not violated by the amounts awarded.

2. The Applicant did not sustain any material or moral injuries as a result of the Administration's actions, and is not entitled to compensation.

The Tribunal, having deliberated from 31 October to 21 November 2000 in New York, and from 4 to 27 July 2001 in Geneva, now pronounces the following judgement:

I. The Applicant asks the Tribunal to analyze and to recompute twenty four individual claims for reimbursement, for which he alleges he was underpaid. The Applicant's many claims fall into a limited number of general categories involving the payment of DSA under various

circumstances, an upgrade to first class for airline travel and to higher cost hotel accommodations, the payment of an airport tax and repatriation travel, and other claims. According to him the underpayments of his claims, totaling $9,318.00, are the result of the misinterpretation of certain rules by the Administration.

The Administration responds that its calculations were correct and that it, uncharacteristically and specially, reviewed each individual claim before concluding that only $464 was owed and reimbursing the Applicant by that amount.

II. The Tribunal has reviewed the record in this matter but declines to perform the calculations requested by the Applicant. Rather, as explained below, it has reviewed and interpreted the applicable rules and regulations. It is the role of the Administration to implement the Tribunal's interpretations and to perform any necessary calculations. This might or might not require the revision of the Administration's decisions regarding individual claims, depending on whether the decisions comport with our interpretations. However, it appears that the Administration interpreted its rules according to the principles stated below.

III. The Tribunal notes that this matter was an appropriate one for resolution at the level of the Administration, as suggested by the JAB. It could be argued that an administrative resolution of the Applicant's claims and a more reasonable approach by both parties would have been a better and, for both parties, a more reasonable means of resolving the disagreement. The intervention of an Ombudsman, as contemplated by General Assembly resolution [cite] might have been a useful approach to this dispute.

IV. The Administration contends that, in the absence of any legal obligation to reimburse the Applicant under the rules and regulations, settlement was not in the interest of the Organization. The Tribunal can only comment that the Administration does have a responsibility to refuse to reimburse patently unsubstantiated and improper claims. The Tribunal is reminded of the concern of the General Assembly and the individual Member States with the budget and the expenditures of the Organization and with the responsible administration of financial resources.

Of course, the fair and proper treatment of staff members also is of great importance to the success of the Organization. Thus, while the budget and finances may not be the only considerations underlying the relevant policies and procedures of the Organization, they are among the important considerations when evaluating the implementation of pertinent rules and regulations.

V. In this case, based on the information before it, the Tribunal was not convinced that the Respondent failed to follow the rules or interpreted them incorrectly. It was not shown that the rules were interpreted unfairly. An examination of all the claims made by the Applicant - varying from requests for payments for connection time, rest stops, overnight travel, sick leave, higher rate hotels, airport taxes and terminal allowances, rerouting flights, surface travel, and repatriation allowance, among others - were addressed properly by the Respondent and were reviewed in detail.

VI. However, to illustrate the type of review and analysis conducted by the Tribunal that lead to the rejection of the application, a few examples will suffice.

The Administration is justified in refusing to pay a claim that is not supported by the required documentation and would be acting contrary to its own rules if it did otherwise. The required documentation must comply with the rules or Administrative Instruction. It must actually support the claim made, *e.g.*, with the proper dates, names and locations. While this requirement might seem onerous and overly bureaucratic to the staff member affected, it is essential to the proper administrative and financial functioning of the Organization. Reimbursement will and must be made in a timely fashion for allowable claims when they are supported by the proper documentation. Such a requirement is fully consistent with the language, intent and spirit of the Staff Rules. Consequently, showing a bill from a hotel in one city to prove the date of departure from a second city fails to meet the requirements, raises questions and delays attempts to process a claim.

Several other claims made by the Applicant were unsupported by the required receipts or other written documentation. While the documentation might have been difficult to obtain in

some places and might have been lost on other occasions, the rules state clearly what is required. It was an appropriate exercise of discretion and implementation of the rules to follow the written standards for reimbursement, which should be followed equally in all cases. The pursuit by the Applicant of these claims without the proper documentation was an exercise that needlessly involved hours of the time and the staff of several bodies.

In addition the Organization is not required to reimburse staff for expenses for travel or terminal expenses that were not actually incurred or that cannot be substantiated with the required documentation. Again the proper administrative and financial functioning of the Organization is at issue.

Another proper rationale for denying a claim relates to the time limits specified in staff regulation 111.2 (a), to avoid the retroactivity of payments mentioned in staff rule 103.15 (ii). The Tribunal notes the importance of a fixed time by which claims must be made and paid to the proper administrative and financial functioning of the Organization.

Several claims for reimbursement made by the Applicant concern weekend and overnight travel. According to the Staff Rules, when a staff member is on official duty travel status during a weekend that person is expected to remain in the city of assignment in order to obtain reimbursement. During these weekend days, when the staff member is not working, the Organization still pays for subsistence expenses, provided the person remains at the duty station. A staff member is free to spend a weekend elsewhere but at his or her personal expense. The payment of subsistence can be properly linked by the Administration to the assignment and duty station without abridging an employee's right to vacation.

The Respondent regulates overnight travel according to staff rule 107.18 (c). An administrative instruction - ST/AI/196 3 (c) - applies. In general, payment is made at the arrival city rate. When the travel involves a return to a duty station other considerations must be taken into account. If the return to duty station involves more than twenty four hours of travel and an overnight stay in an intermediate city, *e.g.*, Poona-London-New York, the Administration pays for travel at the departure city rate, not at the intermediate city rate. This is in keeping with 3 (c). regarding returns from official business, when the allowance is paid at the rate applicable to the last authorized place at which the staff member spent the night. Otherwise, the Administration

pays the DSA at the rate applicable for the city where the penultimate stop occurs, when a major part of the day is spent there before an overnight flight. The Respondent neither interpreted nor applied this rule incorrectly.

The DSA for travel time is different from that for time at a duty station, since the staff member has no costs for accommodations, meals, or similar expenses. The payment is often for fictitional expenses, which must be linked to a post. The Administration's choice of the last, rather than an intermediate or final, station is not unreasonable. When applied to the Applicant, the rule means that he cannot be paid at the rate for London (his home city), since a rule and its interpretation need not result in the payment of the highest possible amount when comparing departure, intermediate and destination cities.

VII. While budgetary and accounting rigor is important, the Organization must be fair toward its employees. Sometimes, in cases of doubt, the Administration might be warranted in deciding a claim in favor of the staff member, as was done concerning some of the claims made by the Applicant. The Tribunal cannot rule whether this exercise of discretion in favor of the staff member should predominate. It merely notes that on occasion this approach would obviously be the appropriate one.

VIII. The Applicant raises several procedural issues, including a prejudicial joinder by the JAB of two cases involving him, the failure of the JAB to conduct a critical review of his claims and the Respondent's untimely response to the JAB. The JAB is reminded that the decision whether to join two appeals must always be considered so as to protect the interests of the Applicant and not as a matter of procedural efficiency. The Tribunal finds no prejudice in the joinder of the two cases. With regard to the Applicant's challenge to the JAB's review of his claims, the Tribunal notes that the JAB declined to perform an accounting or to consider the Applicant's contentions claim by claim. Instead it recommended a practical solution, which the Administration refused to adopt. The Tribunal cannot fault the JAB for this approach.

IX. The Applicant also alleges bias and discrimination. For example, he characterizes the "inordinate delays in first settlement" as discrimination and believes certain staff processing his claims were biased against him. While the Tribunal understands the frustration of an employee in having to wait for reimbursement once all the necessary documentation and proofs have been provided, the Tribunal finds no support for the claims of discrimination. The reaction of the staff to the Applicant's repeated requests for reviews, accountings and records, a reaction that became more brusque with time, is not bias against the Applicant.

X. In view of the foregoing and having considered the pleas, contentions of the parties and the record, the Tribunal:

(i) Orders the Administration to process the claims of the Applicant in accordance with the above criteria, if it has not done so; and

(ii) Rejects all other pleas.

(Signatures)

Mayer GABAY
President

Julio BARBOZA
Vice-President

Marsha A. ECHOLS
Member

Geneva, 27 July 2001

Maritza STRUYVENBERG
Executive Secretary